

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISC. APPLICATION NO. 441 OF 2022

ARISING FROM CIVIL SUIT NO.854 OF 2020

DICK MUBIRU **APPLICANT**

VERSUS

ANN NAMATOVU MUGERWA

MUTYABA BENEDICT

SENERO LAWRENCE

(Administrators to estate of late Professor

John Sebastian Mugerwa).....RESPONDENTS.

RULING

BEFORE HON LADY JUSTICE FLAVIA NASSUNA MATOVU.

This is an application to set aside the order dated 29th October 2021 dismissing HCCS No. 854 of 2020.

It was brought under S. 98 of the Civil Procedure Act and 0.52 rr1 &3 of the Civil Procedure Rules by Notice of motion which was supported by an affidavit sworn by one George Kahemura a process server of the high court.

Briefly the grounds were that the said suit was dismissed under O. 5 R. 1(3) a , b and c of the Civil Procedure Rules for non-service of summons to file defense within the required time and yet the same had been served. That the suit was therefore dismissed in error and should be reinstated.

After carefully studying the pleadings on record, the submission of counsel plus relevant law, I have noted as follows:

- a) Summons to file defense in HCCS No. 854 /2020 were issued by court on 29/10/2020.
- b) The Plaintiff failed to serve the said summons in the ordinary way and on 19/2/2021 he filed an application for leave to serve the said summons by way of substituted service i.e. M/A No. 281/2021.
- c) On 27/5/2021, the court granted him leave to serve the said summons by way of substituted service and also extended the time within which to serve the same
- d) Summons were accordingly served on the defendants by way of substituted service in Bukedde Newspaper on 10/6/2021.
- e) A return of service was filed on 24/8/2021.
- f) However, the suit was dismissed on 29/10 2021 for non-service of summons under 0.5 R.1(3) of the Civil Procedure Rules.

It is apparently clear that this suit was dismissed in error because indeed the Summons had been served as ordered by court and in accordance with the law.

S. 98 of the Civil Procedure Act allows court to exercise its inherent powers and make such orders as may be necessary for the ends of justice. In my view the scenario in this case is one where the court can exercise its inherent powers to avoid a miscarriage of justice.

The order dismissing HCCS NO.854 /2020 dated 29/10/2021 is accordingly hereby set aside and the said suit is hereby reinstated.

This application is therefore hereby allowed in the aforementioned terms and the applicant shall bear his costs for this application.

Dated at Kampala this 29th day of September 2022



FLAVIA NASSUNA MATOVU
AG. JUDGE.